

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

PATRICIA L. DANKO,)	CASE NO. 5:14 CV 950
)	
Plaintiff,)	
)	
v.)	JUDGE DONALD C. NUGENT
)	
CAROLYN W. COLVIN,)	
Commissioner of Social Security,)	Magistrate Judge George J. Limbert
)	
Defendant.)	<u>MEMORANDUM OPINION</u>

This matter is before the Court on the Report and Recommendation of Magistrate Judge George J. Limbert (Docket #18), recommending that the Commissioner of Social Security's final determination denying Plaintiff, Patricia L. Danko's application for Disability Insurance Benefits ("DIB") under the Social Security Act, 42 U.S.C. §§ 416(i) and 423(d) be affirmed.

Factual and Procedural Background

As set forth by the Magistrate Judge, the factual and procedural history of this case is as follows:

I. PROCEDURAL AND FACTUAL HISTORY

Plaintiff applied for DIB in October of 2010 alleging disability beginning September 16, 2010 due to chronic pulmonary obstructive disorder ("COPD") emphysema. ECF Dkt. #13 ("Tr.") at 121-127, 162. The SSA denied Plaintiff's applications initially and on reconsideration. Tr. at 65-98. Plaintiff requested an

administrative hearing, and on August 28, 2012, an ALJ conducted an administrative hearing and accepted the testimony of Plaintiff, who was represented by counsel, and a vocational expert ("VE"). Tr. at 29-64, 100. On September 14, 2012, the ALJ issued a Decision denying benefits. Tr. at 12-20. Plaintiff requested that the Appeals Council review the ALJ's Decision, and on March 4, 2014, the Appeals Council denied review. Tr. at 5-11.

On May 2, 2014, Plaintiff filed the instant suit seeking review of the Decision. ECF Dkt. #1. On August 6, 2014, Plaintiff filed a brief on the merits. ECF Dkt. #14. On October 6, 2014, Defendant filed a brief on the merits. ECF Dkt. #16. A reply brief was filed on October 17, 2014. ECF Dkt. #17.

II. SUMMARY OF RELEVANT PORTIONS OF THE ALJ'S DECISION

The ALJ determined that Plaintiff suffered from degenerative disc disease ("DDD") and osteoarthritis of the lumbosacral spine, per MRIs on February 23, 2011 and October 3, 2011; moderate thoracolumbar dextroconvex scoliosis, per MRI on February 23, 2011; DDD and osteoarthritis of the cervical spine; and COPD and asthma with a strong and continuing history of tobacco abuse, which qualified as severe impairments under 20 C.F.R. §404.1520(c). Tr. at 14. The ALJ further determined that Plaintiff suffered from a remote history of alcohol and cocaine dependence, gastroesophageal disorder, status post-hysterectomy, hypertension, and very mild depressive disorder, which qualified as non-severe impairments. *Id.* The ALJ concluded that Plaintiff did not have an impairment or combination of impairments that met or medically equaled one of the impairments listed in 20 C.F.R. Part 404, Subpart P, Appendix 1 and 20 C.F.R. §§ 404.1520(d), 404.1525 and 404.1526 ("Listings"). *Id.* at 15.

The ALJ found that Plaintiff had the residual functional capacity ("RFC") to perform lightwork as defined in 20 C.F.R. § 404.1567(b), except that: she could occasionally climb ramps and stairs, but never climb ladders, ropes, or scaffolds; she could occasionally stoop, kneel, crouch, and crawl; she needed to avoid concentrated exposure to respiratory irritants, such as fumes, odors, dusts, gases, poor ventilation, etc.; and she could not work around dangerous moving machinery or at unprotected heights. Tr. at 15.

The ALJ ultimately concluded that Plaintiff could perform her past relevant work as a cashier and a waitress and thus the ALJ found that Plaintiff had not been under a disability as defined in the SSA and was not entitled to benefits.

(Report and Recommendation (Docket #18) at pp. 1-3.)

Report and Recommendation

Plaintiff filed her Complaint with this Court on May 2, 2014, challenging the final decision of the Commissioner. (Docket #1.) The Magistrate Judge issued his Report and Recommendation on July 23, 2015, finding the ALJ properly reviewed the evidence and applied the correct law in determining Plaintiff's RFC and in crediting the state agency physicians' assessments and also finding that substantial evidence supports the RFC, which did not include the severe limitations that Plaintiffs testified to or the use of a wheelchair and cane. (Report and Recommendation at p.18.)

On August 5, 2015, Plaintiff filed Objections to the Report and Recommendation. (Docket #19.) On August 19, 2015, the Commissioner of Social Security filed a Response to Plaintiff's Objections. (Docket #20.)

Standard of Review for a Magistrate Judge's Report and Recommendation

The applicable district court standard of review for a magistrate judge's report and recommendation depends upon whether objections were made to the report. When objections are made to a report and recommendation of a magistrate judge, the district court reviews the case *de novo*. FED. R. CIV. P. 72(b) provides:

The district judge must determine *de novo* any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

The standard of review for a magistrate judge's report and recommendation is distinct from the standard of review for the Commissioner of Social Security's decision regarding benefits. Judicial review of the Commissioner's decision, as reflected in the decisions of the

ALJ, is limited to whether the decision is supported by substantial evidence. *See Smith v. Secretary of Health and Human Servs.*, 893 F.2d 106, 108 (6th Cir. 1989). "Substantial evidence exists when a reasonable mind could accept the evidence as adequate to support the challenged conclusion, even if that evidence could support a decision the other way." *Casey v. Secretary of Health and Human Servs.*, 987 F.2d 1230, 1233 (6th Cir. 1993) (citation omitted).

Conclusion

This Court has reviewed the Magistrate Judge's Report and Recommendation and has considered the pleadings, transcripts, and filings of the parties, as well as the objections to the Report and Recommendation filed by Plaintiff and the Commissioner's response thereto. After careful evaluation of the record, this Court adopts the findings of fact and conclusions of law of the Magistrate Judge as its own.

Magistrate Judge Limbert thoroughly and exhaustively reviewed this case, and properly found the ALJ's decision to be supported by substantial evidence. Accordingly, the Report and Recommendation of Magistrate Judge Limbert (Document # 18) is hereby ADOPTED. The Commissioner's final determination denying Plaintiff's application for Disability Insurance Benefits is hereby AFFIRMED.

This case is hereby TERMINATED.

IT IS SO ORDERED.



DONALD C. NUGENT
United States District Judge

DATED: September 8, 2015